IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3672 OF 2006

B.A. Sharma. .. Petitioner.

vs.

The Municipal Corporation
for Greater Bombay
& Anr. . .. Respondents.

Mr. R.R. Sharma for petitioner.
Mr. Rakesh Patel i/by M.J. Shetty
for Respondent No.2.
Ms. Nisha A. Dabhade for Respondent No.1.

CORAM : A.P. DESHPANDE, J.

DATE : 11th December, 2006.

P.C.

. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of the parties.

2. The dismissal of the chamber summons taken out by the plaintiff, by the City Civil Court has given rise to the filing of this petition.

3. The petitioner is in possession of the suit

premises since the year 1967. The building is constructed pursuant to a plan sanctioned sometime in the year 1966-67 and the same was later on modified. The petitioner was served with a notice by the Corporation that the premises in which the petitioner/plaintiff is residing is an unauthorised premises. The petitioner/plaintiff instituted the instant suit before the City Civil Court seeking a declaration that the premises in question are sanctioned premises and the construction is not unauthorised. On these pleadings the plaintiff has led evidence. The initial sanctioned plans as also the modified plan and the completion certificate of the building were exhibited. The plaintiff is not in possession of any other premises owned by the respondent no. 2. Hence, there cannot be any confusion in the minds of the parties about the suit property. The petitioner/plaintiff applied for amendment of the plaint with a view to correct the dimensions of the suit premises. In the plaint it was initially averred that the suit premises are admeasuring 30’ X 34’ whereas according to the revised plan the dimensions are 37’ X 24’. The petitioner/plaintiff has mentioned in the plaint the dimensions as mentioned in the original sanctioned plan whereas by the proposed amendment the petitioner wants to clarify the position in regard to the dimensions of the premises according to the revised/modified plan. As the petitioner is in

possession only of one premises given by the respondent landlord, all the parties are in know of the fact as to which is the suit property, for demolition of which the Corporation has served the notice terming it as an unauthorised structure. No prejudice whatsoever would be caused to the respondents if the amendment is permitted. However, if the amendment is not allowed there is every chance that the plaintiff may suffer irreparable loss and undue hardship and inconvenience, whereas allowing the present amendment would be a step in furtherance of the cause of justice. Hence, the present writ petition has to be allowed.

4. In the result, the impugned order passed by the City Civil Court is quashed and set aside. The Chamber Summons taken out by the plaintiff for amendment of the plaint is allowed. Amendment to be carried out within two weeks from today.

5. Rule is made absolute in the above terms. No order as to costs.

. C.C. expedited.

(A.P. Deshpande, J.)